

**Report to the Washington State Legislative Ethics Board
on the
2008 Council on Governmental Ethics Laws (COGEL) Conference
December, 2008 – Chicago, IL**

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Over 300 people attended this year's COGEL conference. Next year's conference will be held in Scottsdale (Phoenix), Arizona, but the location of the following two years was switched because of other events that would make conference arrangements difficult. The 2010 Conference will be held in Washington D.C. and the 2011 Conference will be held in Nashville, TN. The 2012 conference will be held in Quebec, Canada.

This report is a summary of the 36 pages of notes that I took during the sessions. As usual, the morning and afternoon breakout sessions included more segments than any one person could attend. However, since some sessions were repeated at different times, I was able to attend all of the sessions I chose and still visit the Sears Tower.

Plenary Session:

Professor Paula Franzese of Seton Hall University of Law delivered one of the morning breakfast sessions and, as usual, what she had to say was inspirational. She shared her principles of good government noting that the purpose of guilt is to remind us to get back within the circle of our first principles:

- 1) Integrity, which she defined as occurring when the outside matches the inside. Specifically, what should match internally and externally is what we are willing to walk into the room for or walk out of the room over.
- 2) Humility (vs. arrogance)
- 3) Being impeccable with our word. Words lead to actions, which form our character and shape our destiny. Our words should promote understanding and compassion. She contrasted compassionate with brutal honesty and advised saying what we're thinking only if it's kind and avoiding sarcasm, anger and duplicity.
- 4) Service: It's never about us; it's always about service and we should pray to be used. We should say "thank you" hundreds of times a day because a grateful heart doesn't have room for much more. Everything is an opportunity.
- 5) Forgiveness: Penalties have to include allowance for self-forgiveness. Lack of forgiveness is like shooting yourself in the foot everyday and expecting the other person to die. She noted that the broken heart has more room for the light to get in.

an ethical culture is the amount of money paid out in litigation and fines compared to the cost of surveys of departments that ask them to identify the need in their department.

One attendee volunteered that he uses a 30-question survey that takes approximately 5 minutes to complete. Another noted that in his city all new committee members are required to go through a two-day ethics program before they are allowed to serve on any committee.

Two particular issues were the focus of the remainder of the discussion – “Legislative Immunity” and “the Cone of Silence.”

Legislative Immunity protects any speech in the legitimate legislative sphere. In Louisiana, the ethics commission does not have jurisdiction over this immunity. Many cities also recognize this immunity. While it allows legislators to speak freely, there have apparently been city attorneys who have advised that it’s a good way to get away with things.

The Cone of Silence refers to a process that is used in some cities to guard the competitive procurement process. All of the information on the matter has to flow through one assigned officer and if you violate that, whether you work for the government entity or you’re the vendor, you’re immediately disqualified from the bidding process on that particular bid. Appeal can only be made to the hearing examiner. All vendors are notified of this rule on three different occasions for each RFP and must sign acknowledgement that they’ve received it and agree to comply with it. A low-level employee makes contract decisions because he/she has no particular interest in it and no political constituency to influence his/her decision. Legislative Immunity does not apply to this process and legislators who are contacted are required to advise the party contacting them that they are not allowed to discuss it. Miami/Dade noted only two disqualifications in the two years that they have been using this method, though one of them was so egregious that it resulted in disbarment.

There was universal agreement and general discussion about the importance of publications and the use of the website and printed media for dissemination of information, both for ethics education and for keeping citizens informed.

Managing Electronic Records

This session focused on ease of collection, storage, accessible indexing and destruction of public records. These include EPD (electronic public data) as well as paper copies. Data can be anything, in various formats, but EPD also includes metadata or “data about data” and requestors also have access to this type of information. For instance, an email from X to Y is data but the properties that include, for instance, the STMP server through which it was sent is meta data and this, too is electronic public data.

Some of the challenges in managing EPD include the rate at which it is increasing in volume (60% a year), who is responsible for storing it, the need for more effective

answers, at least initially, but everyone willingly held up their card of choice when questions were asked.

Online training included Websites, DVDs, online demos, e-learning modules and web conferencing.

Outreach to external organizations not only increases awareness of the State's ethics laws but also generates a revenue stream for training. Labor unions and the state bar associations were two of the examples given. They may be willing to sponsor large events. It later occurred to me that mandatory training for lobbyists might be another and, since it is not training of the legislature, charging the lobbyists would be appropriate. Further, it seems that lobbyists should be required to be familiar with the State Ethics Act and this type of training could be a condition of their registration as lobbyists.

The use of external organizations is a bit different. Open government associations and the State bar associations were given as examples. They may want training as part of their own events and could be charged for it – especially if the training is part of or itself qualifies for CLE credit. Another possibility that was suggested was teaming up with the AG's office and having law schools throughout the State host (and pay) for the event. Other ideas included training to/with municipal government or particular boards like zoning, planning or city councils. Again, it later occurred to me that college courses for political science majors (for instance) might include ethics training or be the sole focus of the course, the latter for a fee.

The use of (electronic) surveys not only returns data on what the respondents believe they may want or need but on the effectiveness of current training methodologies and approaches. Surveys can also be instructional tools, depending on how they are written.

Monthly electronic newsletters cost almost nothing to create and disseminate and are another easy way to promulgate ethics education. I shared that our House Counsel includes an "Ask Tim" section that is not only educational but also engaging.

Press releases keep the public and the constituencies aware of the active engagement of those who work in governmental ethics, even if they are not published in the printed media. Further, they can generate news articles and editorials that can be placed on the website and announced electronically. Annual reports present another press release and educational opportunity and can also be placed online. One of the ideas that occurred to me included using not only sanctions but also dismissals as opportunities for ethics education, especially in terms of the procedure through which complaints are processed. Announcements of monthly meetings could be press releases and, if the website is used to potential, RSS feeds present another opportunity, especially for our legislators.

Commissioners Roundtable: Leadership Challenges

Facilitated by retired Congressman Rizzoli, discussion went around the room allowing people to identify their agency and the challenges they encountered, in particular.

internal complaints (including ethics, public access, open government and more), in addition to their other unrelated duties. 90% of the cases were resolved and, in the other 10%, they "agreed to disagree." Their AG wrote a letter questioning this practice. While their AG has sweeping powers that can't be removed legislatively, they are grounded in common law and she has no express authority. In one letter to a state agency, she stated her opinion that they had violated the FOI act and that it was a Class C Felony. One reason the AG's authority falls into question is that their AG can represent opposing state agencies in court creating, perhaps, a conflict of interest. There are no criminal penalties for failures to hold open public meetings.

Twenty to thirty states have essentially nothing but the courts to enforce ethics, relative to their legislatures, public disclosure and open meetings.

Two of the suggestions that came up were agencies like the AG, SAO, FOI and Ethics banding together to approach the legislature for authority and/or budgetary considerations and using the press for media support. Another was the possibility of making a State ethics agency into a constitutional office like the SAO.

Starting Out, Starting Over, Keeping it Fresh

Changing the political culture is the biggest challenge. This includes moving from a strictly advisory capacity to having enforcement authority and possibly subpoena authority, as well. The use of many of the tools discussed in the "Educating Constituencies" session was also discussed here relative, especially, to engaging the citizenry or at least making them aware and supportive of the work. Press releases, especially, signal the stakeholders that the agency is busy!

Of special note is the need for agencies to understand the contemporary press better. For instance, they no longer have time or budgets to research and there are few genuinely investigative reporters left.

An ethics agency's focus needs to be on encouraging voluntary compliance (providing less work for enforcement, which has a positive budget impact as well). Some of the key factors in this pursuit are: A leading edge website; a toll free information line; a very active press office; and making *everything* available on the website.

Additionally, an ethics agency, like all others, needs a mission/purpose statement and a vision. They need a clear idea where they are headed and what goals and projects they envision, even if they are unattainable at present.

Some suggestions of where agencies may be headed included better use of technology, especially their website and making it more visually appealing; becoming more proactive with the media; developing a speakers program and introducing a new application to track legislative action and monitor bills that affect the agency or which the agency rules may affect.

as long as he/she used them consistently, though I think that might be problematic, as well.

This session, among others that I attended, placed a high priority on values formation (apparently identical or related to the presenter's definition of an ethical culture). In fact, one new theme at this year's conference was the opinion that the nature of governmental ethics work should be aspirational in nature. While that has an admirable ring to it, in the face of the many challenges that were noted, including limited budgets, I privately wondered if this was a pragmatic goal, much less an appropriate one in the face of the ethical diversity in a democratic society.

Three pieces of practical advice were 1) to have a communication plan, 2) to use enforcement to educate (in the greatest number of ways) and 3) to leverage services from other departments. Other departments might include office support, the legal department, records, personnel (in hiring and ethics education), IT and procurement (for instance in advertising meetings). Precedents from other agencies and departments may also be valuable tools.

One attendee shared that former members may also be resources (as long as they don't think they still work there). Another suggested knowing who your cheerleaders are and keeping them well fed and knowing who your enemies are and keeping them well fed, as well. Legislators, for instance, may be defensive or resistant and deny that they *need* assistance. There are a number of possible reasons for this, including political realities. One way to address this is an "elevator speech." It communicates that for those whose interest is in doing the right thing, we're here to advise, educate and assist but for those who aren't, we're here to enforce.

Networking is also crucial, both internally and externally. Externally, it's important to find out what's already out there because other agencies may have already done the work and/or their work can inform you how to do it or what pitfalls to avoid. Internally, asking the opinions of others gets "buy-in," though caution was noted over making promises.

Finally, agencies need to remember to balance planning and execution. Change (and improvement, in particular) requires planning. However, it's executing plans that actually brings about the change.

Respectfully submitted,

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